

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Application of	)	
	)	
SAMUEL MOSES	)	FCC File No. 0000415681
	)	
To Operate an Industrial/Business Station in the	)	
Private Land Mobile Radio Services in	)	
Montrose, California	)	

**ORDER ON RECONSIDERATION**

**Adopted: September 12, 2002**

**Released: September 16, 2002**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On June 11, 2001, James Kay (Kay) requested reconsideration of the grant of the above-referenced application filed by Samuel Moses (Moses), because of potential harmful interference to Kay's Private Land Mobile Radio (PLMR) stations in the Los Angeles, California area.<sup>1</sup> For the reasons discussed below, we grant the Kay Petition, deny an informal petition filed by Ted S. Henry (Henry Radio or Henry), set aside the grant of Moses' application, and dismiss the application. Additionally, we direct Thomas Kurian, the current licensee of record, to cease operation on Station WPSI886, Montrose, California and return the authorization to the Commission.

2. *Background.* On March 27, 2001, Moses applied to operate a trunked PLMR station in Montrose, California in the Industrial Business (I/B) Radio Pool. The United Telecom Council (UTC), an FCC-certified PLMR frequency coordinator, coordinated the frequencies and submitted the referenced application to the Licensing and Technical Analysis Branch (Branch or LTAB) for authorization of ten paired frequencies.<sup>2</sup> On May 14, 2001, the Branch granted Moses a license to operate trunked PLMR Station WPSI886.

3. On June 8, 2001, Henry filed an informal petition requesting that we set aside the grant of Moses' application.<sup>3</sup> Henry later amended his petition.<sup>4</sup> On June 11, 2001, James A. Kay, Jr. (Kay) requested reconsideration of the grant of the application due to potential harmful interference to Kay's PLMR stations in the Los Angeles area.<sup>5</sup> On July 24, 2001, the Branch requested the UTC to explain its frequency recommendation for Station WPSI886 in light of the interference issues raised by Henry

<sup>1</sup> See Letter from Robert J. Keller, Esq., counsel to James Kay, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 11, 2001) (Kay Petition). Kay requested that the letter be deemed a request for reconsideration pursuant to Section 405(a) of the Communications Act, as amended, 47 U.S.C. § 405(a), in the event of a grant of the Moses application.

<sup>2</sup> See FAC No. NV0UU01612.

<sup>3</sup> See Henry Radio Informal Petition (dated June 8, 2001) (Henry Radio Informal Petition).

<sup>4</sup> See Henry Radio Amended Informal Petition.

<sup>5</sup> See Kay Petition at 1.

Radio.<sup>6</sup> On July 31, 2001, UTC replied and indicated that a subsequent study revealed that use of the frequencies may cause interference and degradation in service, and recommended that the Branch set aside the grant of the license.<sup>7</sup> Also, on July 31, 2001, Henry filed a supplement to his informal petition.<sup>8</sup> On August 14, 2001, Moses filed a consolidated opposition to the July 31, 2001 UTC Letter and the informal petition and supplemental pleadings filed by Henry.<sup>9</sup> Moses did not oppose the Kay Petition.

4. On December 18, 2001, the Branch consented to the assignment of the license for Station WPSI886 from Moses to Thomas Kurian.<sup>10</sup> On March 29, 2002, Henry, as President and system manager of National Science and Technology Network, Inc. (NSTN), filed a Petition for Expedited Action on the June 11, 2001 amended informal petition, arguing for the first time that the initial grant of the Moses application was in error due to harmful interference to NSTN's I/B Stations KVP831 and WBP731.

5. *Discussion.* Kay, a licensee whose existing licenses were adversely affected by the grant of Moses' application, timely filed a request for reconsideration of the grant of the subject application. The subsequent UTC finding that the Moses license may cause unacceptable degradation of service to adjacent channel licensees, thereby violating Section 90.187 of our Rules,<sup>11</sup> constitutes a sufficient reason to set aside the grant of the subject license. Accordingly, we set aside the grant of the license for Station WPSI886, return the subject application to pending status and dismiss the application.

6. We deny the Henry Radio Informal Petition and Amended Informal Petition. In addition, we conclude that Henry Radio did not provide any arguments that would have warranted reconsideration of the license grant to Moses. Henry argues that the Commission should have dismissed Moses' application because Moses allegedly filed two applications for the same facilities in violation of Section 1.937 of the Commission's Rules.<sup>12</sup> We find no evidence that Moses filed duplicative applications as asserted by Mr. Henry. Based upon our review of our records, it appears that Moses filed one application, which was given two different file numbers. Henry Radio also makes vague and unsupported allegations concerning Moses' name and his use of the term "license coordinator." None of these allegations presented a sufficient basis for reconsideration of the subject action. Furthermore, we will dismiss the July 31, 2001 supplement as untimely.<sup>13</sup>

7. We note that while Moses and Kurian were free to consummate their assignment, they did so subject to the risk that we would grant one or both of the pending petitions.<sup>14</sup> We are serving a copy of

<sup>6</sup> See Letter from Mary Schultz, Chief, LTAB, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission to United Telecom Council (July 24, 2001) (Branch Letter).

<sup>7</sup> See Letter from Renee McIlwain, Director of Spectrum Services, UTC to Mary Shultz, Chief, LTAB, Public Safety and Private Wireless Division, Federal Communications Commission (July 31, 2001) (UTC Letter).

<sup>8</sup> See Henry Radio, Inc. Supplement to First Amended Petition (dated July 27, 2001, and filed July 31, 2001) (Henry Radio Supplement or Supplement).

<sup>9</sup> See Letter from Dennis C. Brown, counsel for Samuel Moses, to Magalie Roman Salas, Secretary, Federal Communications Commission (dated August 14, 2001, and filed August 16, 2001) (Moses Letter).

<sup>10</sup> FCC File No. 0000681221.

<sup>11</sup> 47 C.F.R. § 90.187.

<sup>12</sup> Henry Radio Informal Petition, Henry Radio Amended Informal Petition.

<sup>13</sup> See 47 C.F.R. § 1.106(f).

<sup>14</sup> See, e.g., Transit Mix Concrete and Material Company, *Memorandum Opinion and Order*, 16 FCC Rcd 15005 (2001); Improvement Leasing Co., *Memorandum Opinion and Order*, 73 FCC 2d 676, 684 (1979), *aff'd sub nom. Washington Association for Television and Children v. FCC*, 665 F.2d 1264 (D.C.Cir.1981).

the instant order on Thomas Kurian, current licensee of Station WPSI886, requiring him to cease operation and return the subject authorization to the Commission for cancellation.

8. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of Commission's Rules, 47 C.F.R. § 1.106, the Request for Reconsideration filed by James A. Kay, Jr. on June 11, 2001 IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 54(i), 405, and Section 1.106 of Commission's Rules, 47 C.F.R. 1.106, the informal petition, First Amended Petition and Supplement to First Amended Petition filed by Henry Radio, Inc. on June 8, 12 and July 31, 2001, respectively, ARE DISMISSED.

10. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 1.106 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Licensing and Technical Bureau shall set aside the grant of license for Station WPSI886 granted on May 14, 2001, return the application to pending status, and DISMISS the application.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau